

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

STEPHEN McCULLOM, et al.,  
Plaintiffs,

v.

BRAD LIVINGSTON, et al.,  
Defendants.

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CIVIL ACTION NO.  
3:12-CV-02037

**JOINT OPPOSED EMERGENCY MOTION TO EXTEND DEADLINES**

NOW COME Defendants the University of Texas Medical Branch (UTMB) and the Texas Department of Criminal Justice (TDCJ), by and through their Attorney, the Attorney General for the State of Texas, and submit this Defendants' Joint Opposed Emergency Motion To Extend Deadlines. In support thereof, the Defendants respectfully offer the following:

This case was originally filed against TDCJ on June 26, 2012. UTMB was added as a defendant on April 5, 2013. [D.E. 43]. On May 30, 2013, UTMB filed a Motion To Dismiss Under FRCP 12(c). [D.E. 55]. That motion to dismiss is still pending.

Since this case was filed, the parties have exchanged extensive written discovery and taken approximately 15 oral depositions. The discovery deadline and trial deadline have been changed many times. On March 10, 2014, this court entered its Fourth Amended scheduling order. [D.E. 143]. According to that order, discovery and dispositive motions are to be completed by May 2, 2014. *Daubert* motions are to be filed by May 16, 2014. Despite the parties' efforts, much discovery has yet to be completed. Since discovery has not been completed, dispositive

and *Daubert* motions cannot be completed and filed. As of the date of the filing of this motion, the following discovery is outstanding, with plans to be completed:

1. Deposition, by plaintiff, of TDCJ fact witness Dr. Linnette Linthicum, scheduled for May 13, 2014.
2. Deposition, by plaintiff, of TDCJ expert, Dr. Benjamin Leeah, no date set.
3. Deposition, by plaintiff, of TDCJ expert Oscar Mendoza, no date set.
4. Deposition, by plaintiff, of Dr. Owen Murray, pursuant to order of Magistrate Judge Tolliver, on or before May 12, 2014. [D.E. 155]
5. Deposition, by plaintiff, of Dr. Glenda Adams, pursuant to order of Magistrate Judge Tolliver, on or before May 12, 2014. [D.E. 155]
6. Deposition, by defendants, of plaintiff's expert Ron Clark, no date set.
7. Defendant TDCJ responses and objections to plaintiffs' 11<sup>th</sup> requests for production, due May 5, 2014.
8. Deposition, by plaintiffs, of UTMB nurse McKinney, no date set.
9. Deposition, by plaintiffs, of UTMB nurse Haywood, no date set.
10. Deposition, by plaintiffs, of UTMB nurse Huddleston, no date set.
11. Ruling on defendant UTMB's Motion To Dismiss under FRCP 12(c). [D.E. 55].
12. Ruling on defendant Livingston, Thaler and Stephens' Motion For Extension of Time to File Summary Judgment. [D.E. 157].

In addition, there are five other cases pending involving the same allegations of heat related deaths in the prison system. These cases involve most of the same defendants and all of the same lawyers. Despite the fact that the discovery in this case is not completed, plaintiffs have

noticed, in the new cases, approximately 10 additional oral depositions, along with written discovery, between today and May 31, 2014.

Defendants seek a date certain for the parties to complete discovery, beyond which no additional discovery will be permitted. Defendants seek this deadline so that they may complete their dispositive motions and *Daubert* motions, which necessarily cannot be completed until the completion of discovery and expert depositions. Defendants do not seek to extend the pre-trial or trial deadlines. Defendants agree to and suggest the following deadlines:

1. Discovery completion by July 31, 2014.
2. Dispositive motions and *Daubert* motions due August 31, 2014.
3. Pre-trial materials due October 6, 2014.
4. Pre-trial conference on October 30, 2014 at 1:30 pm before Judge Sam A. Lindsay.
5. Trial set on the court's four week docket beginning November 3, 2014.

WHEREFORE PREMISES CONSIDERED defendants UTMB and TDCJ pray that this court extend the deadline for the completion of discovery to July 31, 2014 and the deadline for dispositive motions and *Daubert* motions to August 31, 2014.

Respectfully submitted,

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/s/KIM COOGAN  
KIM COOGAN  
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**ATTORNEYS FOR DEFENDANT  
UNIVERSITY OF TEXAS MEDICAL BRANCH**

**NOTICE OF ELECTRONIC FILING**

I, KIM COOGAN, Assistant Attorney General of Texas, certify that I have electronically submitted for filing **Joint Opposed Emergency Motion to Extend Deadlines** to the Court, on April 28, 2014 in the Northern District of Texas, Dallas Division.

/s/ Kim Coogan  
KIM COOGAN  
Assistant Attorney General

**CERTIFICATE OF CONFERENCE**

I, KIM COOGAN, Assistant Attorney General of Texas, have conferred with opposing counsel who is opposed to this motion. I have conferred with counsel for The Texas Dept. of Criminal Justice and counsel for defendants Livingston, Thaler and Stevens who are not opposed.

/s/ KIM COOGAN  
**KIM COOGAN**  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, KIM COOGAN, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing **Joint Opposed Emergency Motion to Extend Deadlines** has been served by placing same in the United States Mail on this the 28th day of April, 2014, addressed to:

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/s/KIM COOGAN  
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Assistant Attorney General